

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KENNETH E. MARTENSEN,

Plaintiff,

vs.

GEORGE FLOCK, et al.,

Defendant.

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8:06cv516

MEMORANDUM AND ORDER

The plaintiff, Kenneth E. Martensen, has twice been directed by the court (filing nos. 5 and 7) to clarify the basis for subject matter jurisdiction in this case, but he has failed to do so. In filing no. 7, an Order to Show Cause, Magistrate Judge David L. Piester ordered the plaintiff to file, by August 31, 2006, a Response setting forth with specificity the jurisdictional basis for the plaintiff's claims. Magistrate Judge Piester warned the plaintiff that, in the absence of a timely and sufficient Response to filing no. 7, this action would be subject, without further notice, to dismissal without prejudice on the basis of Fed. R. Civ. P. 12(h), which states: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." The plaintiff has not responded.

THEREFORE, IT IS ORDERED:

1. That pursuant to Fed. R. Civ. P. 12(h), the plaintiff's complaint, as amended, and this action are dismissed without prejudice for apparent lack of subject matter jurisdiction; and

2. That judgment will be entered accordingly.

September 5, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge